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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

ELEANOR SNYDER, EXECUTRIX OF THE ESTATE OF LEROY LILJEDAHL,

Petitioner,

v.

BRUTON SMITH,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Whether Congress can provide for any appropriate jurisdictional limitation upon the right of parties who seek federal court enforcement of arbitration agreements;
2. Whether Congress has set forth a condition in the Federal Arbitration Act requiring that arbitration be held in the district where the petition for arbitration is statutorily authorized; and
3. Whether the efficient administration of the federal courts requires that time limitations be imposed particularly on appeals pertaining to arbitration orders.

LIST OF ALL PARTIES TO THE PROCEEDINGS

The caption of the case in the Court contains the names of all parties to the proceedings in the court whose judgment is sought to be reviewed.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

OPINIONS BELOW

The opinion of the Court of Appeals for the Seventh Circuit is reported at 736 F.2d 409 (7th Cir. 1984) (App. 30). The opinion of the United States District Court for the Northern District of Illinois is unreported (App. 22).

GROUNDS ON WHICH JURISDICTION IS INVOKED

The judgment of the Court of Appeals for the Seventh Circuit was entered on June 7, 1984. A timely petition for rehearing *en banc* was denied on July 3, 1984, and this petition is being filed within 90 days of that date. The jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

Sections 2, 3, and 4 of the Federal Arbitration Act, 9 U.S.C. §§ 2-4; Section 1291 of Title 28, 28 U.S.C. § 1291; and Rule 4 of the Federal Rules of Appellate Procedure are set forth in the Appendix.

STATEMENT OF THE CASE

In September of 1971, Bruton Smith, Leroy Liljedahl, and Robert Hitt formed a general partnership known as Viking Investment Associates. Liljedahl died on December 9, 1976, and the Petitioner, Eleanor Snyder, is the executrix of his estate. The partnership agreement expressly provided that the death of a partner did not terminate the partnership and granted the surviving partners the right to purchase the entire interest of the

decedent or terminate and liquidate the partnership. In the event that the parties could not agree upon the purchase price, the partnership agreement provided that the price was to be determined by arbitration. The agreement specifically states:

> Any controversy or claim arising out of or relating to this agreement, or to the interpretation, breach or enforcement thereof, shall be submitted to three arbitrators and settled by arbitration in the City of Houston, Texas, in accordance with the rules then obtaining of the American Arbitration Association; provided, however, and notwithstanding any other provisions of such rules, if the matter submitted to arbitration shall involve a dispute as to the . . . value of a deceased . . . Partner's Entire Partnership Interest, such arbitration shall be held before three arbitrators, one of whom shall be a certified public accountant and the other two of whom shall be licensed real estate appraisers maintaining offices and doing business in Harris County, Texas . . . . Any award made by any majority of the Arbitrators shall be final, binding, and conclusive on all parties hereto for all purposes, and a judgment may be enforced thereon in any court having jurisdiction thereof. (App. 6).

By letter dated January 11, 1977, Smith notified Snyder that he intended to exercise his option to purchase the interest of Liljedahl. After sending that notice, however, Smith failed to comply with the various deadlines in the agreement for consummating the purchase and disputed the purchase price. Although Snyder's attorney advised Smith that the matter could be submitted to arbitration, Smith refused to do so.

After protracted negotiations, which lasted approximately forty-two (42) months, Smith remained unwilling to submit the parties' dispute to arbitration. Snyder filed a demand for arbitration with the American Arbitration

Association on July 14, 1980. On July 28, 1980, Smith notified the American Arbitration Association of his refusal to participate in the arbitration (App. 1). Also on July 28, 1980, Smith filed a lawsuit in a Texas state court in which he alleged that Snyder had breached the partnership agreement by refusing to convey the interest of Liljedahl to Smith (App. 54). On August 4, 1980, Snyder filed a petition to compel arbitration pursuant to Section Four of the Federal Arbitration Act in the Federal District Court for the Northern District of Illinois, Western Division. Jurisdiction was based upon diversity of citizenship. 28 U.S.C. § 1332. When the lawsuit was filed, Smith was a resident of North Carolina. Neither party has been a resident of Texas at any time during the pendency of the dispute.

The lawsuit filed by Smith was later removed by Snyder to a federal district court in Texas. On June 19, 1981, an agreed order was entered in the Texas proceeding by the district court directing that the cause of action be stayed pending final action by the Federal District Court for the Northern District of Illinois on Snyder's petition to compel arbitration (App. 3).

On September 1, 1981, the District Court for the Northern District of Illinois issued an order directing Smith to arbitrate the matters in dispute in Rockford, Illinois, and directing that the arbitration proceed in all respects in accordance with the provisions of the arbitration agreement (App. 15). Smith did not appeal the order of September 1, 1981.

The arbitration hearing was held in Rockford, Illinois, on September 28 and 29, 1982, before three arbitrators. As required by the partnership agreement, one was a certified public accountant and the other two were licensed real estate appraisers maintaining offices and doing busi-

ness in Harris County, Texas. The arbitration panel reached a decision on October 15, 1982 (App. 20). The trial court confirmed the award on May 4, 1983, and on May 20, 1983, entered a judgment against Smith in the amount of Five Hundred Seventy-Six Thousand Forty-One Dollars and Fifty-Nine Cents ($576,041.59), plus costs (App. 28). Smith filed a notice of appeal to the United States Court of Appeals for the Seventh Circuit on June 17, 1983.

On January 18, 1984, the case was argued before Judge Bauer, Judge Flaum, and Judge Swygert of the Seventh Circuit. In its opinion, the divided court held as follows: (1) that the district court had personal and subject matter jurisdiction; (2) that the Federal Arbitration Act was applicable to the partnership agreement; (3) that the prior decision in *University Life Insurance Company of America v. Unimarc, Ltd.*, 699 F.2d 846 (7th Cir. 1983), did not mandate dismissal of Smith's appeal on jurisdictional grounds; and (4) that the district court lacked the power to compel arbitration in the Northern District of Illinois because the arbitration provision of the partnership agreement provided that arbitration was to take place in Houston, Texas. *Snyder v. Smith*, 736 F.2d 409, 416, 418, 419, 420 (7th Cir. 1984).

Judge Bauer dissented on the basis of "the need to give full effect both to the jurisdiction conferred under Section Four and to the policy favoring arbitration that underlies the Federal Arbitration Act." *Id.* at 421. Snyder timely filed a petition for rehearing *en banc*, which the court denied on July 3, 1984.

REASONS FOR GRANTING THE WRIT

Introduction

The ever increasing utilization of arbitration as an alternative means of settling disputes mandates the resolution of the statutory construction question presented by this petition. The Court's consideration and decision regarding the proper construction of the Federal Arbitration Act will provide clarification for the federal judiciary, will enhance the efficient administration of justice, and will promote the use of arbitration by both the business community and the legal profession.

The benefits of arbitration as an alternative to litigation and as a complement to the judicial system result primarily from the speed and the relative economy with which resolution of disputes can be achieved. *See* Burger, *Isn't There A Better Way?*, 68 A.B.A.J. 274 (1982) (annual report on the state of the judiciary given by Chief Justice Burger at a meeting of the American Bar Association). However, the uncertainty created by the Seventh Circuit's construction of Section Four of the Federal Arbitration Act undermines the fundamental objectives of arbitration. Moreover, the Court should grant this petition in order to eliminate the confusion that exists among the federal circuits and within the Seventh Circuit regarding the construction of the statute.

I.

THE CONFLICTING DECISIONS AMONG THE CIRCUITS REGARDING THE PROPER APPLICATION OF SECTION FOUR OF THE FEDERAL ARBITRATION ACT MANDATE THAT THE COURT CLARIFY THE LAW IN ORDER TO ENFORCE ARBITRATION PROVISIONS AS INTENDED BY THE ARBITRATION ACT AND AS ESPOUSED BY THE DECISIONS OF THE COURT.

The primary vehicle for enforcement of arbitration provisions in contracts involving interstate commerce is Section Four of the Federal Arbitration Act, which provides in pertinent part:

> A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition *any United States district court which, save for such agreement, would have jurisdiction under Title 28,* in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. . . . The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, *the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed.* . . .

9 U.S.C. § 4 (emphasis supplied).

Petitioner requests the Court to address the application of the statute to contracts that designate a particular situs for the arbitration proceedings. The Seventh Circuit held that the designation of Houston, Texas, as the situs for arbitration proceedings under the partnership agreement

prohibited the District Court for the Northern District of Illinois from exercising its authority to compel arbitration under Section Four. The propriety of the Seventh Circuit's reading of the statute should be considered by the Court.

A careful review of the decisions of other courts demonstrates substantial confusion regarding the construction of Section Four with respect to the appropriate location for arbitration proceedings. The following cases illustrate the inconsistent rulings by various courts in determining the situs of arbitration proceedings.

In this case, the majority of the Seventh Circuit panel agreed that the District Court for the Northern District of Illinois had both personal and subject matter jurisdiction and that venue was otherwise proper. *Snyder v. Smith*, 736 F.2d 409, 416-17 (1984). However, as to the situs of the arbitration proceeding herein, Judge Swygert and Judge Flaum held that the statutory requirement that the court order arbitration according to the terms of the agreement limited the power of the district court, despite the language of the statute requiring that the hearing under such agreement shall be within the district in which the petition for an order directing such arbitration is filed. The divided court concluded that the situs designation in the agreement overrode the district court's statutory authority to compel arbitration.

In dissent, Judge Bauer stressed that the broad power to compel arbitration extends to "*any* United States district court which . . . would have jurisdiction under Title 28." 9 U.S.C. § 4. Judge Bauer further emphasized the "need to give full effect both to the jurisdiction conferred under Section Four and to the policy favoring arbitration that underlies the Federal Arbitration Act." 736 F.2d at 421.

In addition to the confusion regarding the construction of the statute that exists within the Seventh Circuit, the Ninth Circuit has adopted a construction of Section Four that directly conflicts with the majority opinion in the Seventh Circuit. *Continental Grain Co. v. Dant & Russell, Inc.*, 118 F.2d 967 (9th Cir. 1941). The agreement in *Continental Grain* provided for arbitration of disputes in New York. One party resided in New York and the other in Oregon. A dispute developed involving money that Dant & Russell allegedly owed to Continental. Continental demanded arbitration, but Dant & Russell, like Smith in the instant case, refused. Continental then filed a motion in the United States District Court in Oregon to compel arbitration, although the agreement provided for arbitration in New York. *Id.* at 968. The court granted the motion to compel arbitration but, pursuant to Section Four of the Arbitration Act, provided in its order that the hearing and proceedings under the agreement would take place in Oregon. Continental appealed, arguing that the arbitration should have taken place in New York, as that was the forum agreed to by the parties. *Id.* The Ninth Circuit rejected that argument, and its reasons for doing so illustrate the conflict with the reasoning adopted by the Seventh Circuit.

The Ninth Circuit noted that the exact, original wording of the statute differed in one significant aspect from that which appeared in the official compilation for the United States Code. The statute had originally provided in pertinent part:

> [T]he court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement: *Provided, That* the hearing and proceedings under such agreement shall be within the district in which the petition for an order directing such arbitration is filed.

Id. at 969 (emphasis supplied). The Ninth Circuit viewed the quoted proviso as a limitation on the right of the parties to arbitration at a specific location in accordance with the terms of the contract. Accordingly, the court concluded:

> If there could be any doubt of the power of the legislature to limit the right of arbitration to one conducted within the jurisdiction of the district court ordering the arbitration, it must be dispelled by the consideration that Congress could attach any limitation it desired to the right to enforce arbitration in the federal courts, that it has made a condition that the arbitration be held in the district where the court sits, [and] that the contract in question was executed with a knowledge that Congress had so provided, . . .

Id. In *Continental Grain*, the Ninth Circuit held that the express statutory provision requiring arbitration within the district of the court entering the order to compel arbitration took precedence over the forum selection clause in the arbitration agreement. The holding of the Ninth Circuit thus concurs with the dissenting opinion of Judge Bauer in the instant case. Judge Bauer aptly emphasized that the opinion of the majority, which permitted the terms of the agreement to override the jurisdiction of the district court, totally negated the broad jurisdictional power that Congress conferred upon the federal courts under Section Four of the Arbitration Act. The majority's restrictive reading of the statute thus frustrated the purpose of the statute. When Smith had failed to comply with the terms of the agreement for forty-two months, Snyder filed a demand for arbitration with the American Arbitration Association. When Smith refused to arbitrate, Snyder sought relief by filing a petition in the District Court for the Northern District of Illi-

nois to compel arbitration. The Seventh Circuit erroneously impeded the arbitration by depriving the district court of its authority to compel arbitration under the terms of the Act. *See also* Committee on Commerce, Trade and Commercial Law, *The United States Arbitration Law and Its Application*, 11 A.B.A.J. 153, 154 (1925) (summary of arbitration act by its principal draftsmen, which likewise indicates that the requirement that proceedings be within the district supersedes the right to arbitration according to the terms of the agreement). Thus, had the instant case been brought in the Ninth Circuit, the authority of the district court to compel arbitration in its own district would have been upheld.

To further demonstrate the substantial confusion among the circuits regarding the construction of Section Four, the following case illustrates that a similarly situated litigant in the Fifth Circuit could obtain a result different from that in either the Seventh or the Ninth Circuit. In *Dupuy-Busching General Agency, Inc. v. Ambassador Insurance Co.*, 524 F.2d 1275 (5th Cir. 1975), the Fifth Circuit affirmed an order by the District Court for the Southern District of Mississippi compelling arbitration in New Jersey. The contract in question involved insurance commissions and included a provision for resolution of disputes by arbitration in North Bergen, New Jersey. *Id.* at 1276. A dispute arose, and Ambassador filed a demand for arbitration. *Id.* Dupuy-Busching then filed suit in a Mississippi state court to enjoin the arbitration and revoke its agreement to arbitrate. Ambassador removed the case to the United States District Court for the Southern District of Mississippi and counterclaimed pursuant to Section Four of the Federal Arbitration Act to compel arbitration. *Id.* The district court ruled in favor of Ambassador on the counterclaim and ordered arbitration to

proceed in New Jersey as provided in the agreement. *Id.* at 1277.

The Fifth Circuit justified its disregard for the statutory requirement that the proceedings shall be held within the district on procedural grounds. The Section Four motion to compel arbitration was, according to the court, a compulsory counterclaim that would have been barred if not raised in the federal district court in Mississippi. *Id.* The court limited its holding to Section Four motions filed in response to a suit brought to avoid arbitration in a district other than that specified in the agreement. *Id.* Thus, a litigant in the Fifth Circuit may, under certain circumstances, obtain an order compelling arbitration outside the district in which the Section Four motion is filed, although the statute appears to preclude that result.

The Third Circuit, however, reversed a similar order entered by the district court for the Virgin Islands compelling arbitration in New York in *Econo-Car International, Inc. v. Antilles Car Rentals, Inc.*, 499 F.2d 1391 (3d Cir. 1974). While the petition to compel in *Econo-Car* was the initial pleading in the district court rather than a responsive pleading as in *Dupuy-Busching*, the pertinent language in the opinion is unequivocal. Noting the dilemma created by the statutory language and the forum selection clause in the contract, the court concluded:

> [W]e are inclined to heed the unambiguous statutory language limiting the district court's power to order arbitration outside of the district. We hold, therefore, that the district court erred in ordering arbitration to take place in New York City.

Id. at 1394. The Third Circuit further concluded, "[T]he Federal Arbitration Act extends to the district court for the Virgin Islands, thereby conferring upon it the power to direct arbitration in the present case." *Id.*

In the Second Circuit, a district court may not compel arbitration outside its own district, regardless of the procedural posture of the Section Four petition. *Couleur International, Ltd. v. Saint-Tropez West*, 547 F. Supp. 176 (S.D.N.Y. 1982), illustrates this point. The parties in *Couleur* resided in New York and California. The dispute arose in the context of a "battle of the forms." One provided for arbitration in New York, the other in California. *Id.* at 177. Like *Dupuy-Busching General Agency, Inc. v. Ambassador Insurance Co.*, 524 F.2d 1275 (5th Cir. 1975), the Section Four petition before the court was a responsive pleading. 547 F. Supp. at 177. The court nevertheless denied the motion, reasoning that it had no power under the statute to compel arbitration outside its own district. *Id.* at 177-78.

A prior decision by that court reached the same result and, in dicta, implicitly adopted the reasoning of the Ninth Circuit with respect to the issue in the instant case. *E.C. Ernst, Inc., v. Potlatch Corporation*, 462 F. Supp. 694 (S.D.N.Y. 1978), involved a dispute with respect to the performance of a contract to build a paper mill in Arkansas. *Id.* at 696. The arbitration provision in the contract did not specify any particular situs for the proceedings. *Id.* at 694 n.5. Suit was filed by a subcontractor in an Arkansas state court naming Potlatch as a defendant. Potlatch then filed a third party action against Ernst. Ernst demurred and filed a Section Four petition to compel arbitration in New York. *Id.* at 696. Potlatch argued that the matter should be transferred to Arkansas. The court agreed that the equities favored such a transfer, but nonetheless concluded that it was without power to do so. *Id.* at 697. Citing *Econo-Car*, the court concluded:

> [A]rbitration must take place within the district of the court compelling arbitration regardless of the designation of locale in the contract.

Id. Later in the opinion the court observed:

> As the law read in 1925, it was possible for a contract to provide for arbitration in Kansas, for example, and for a New York corporation to sue to compel arbitration in New York against a California corporation.

Id. at 699.

As none of the critical provisions of Section Four has been amended since 1925, the Southern District of New York apparently adheres to the reasoning of the Ninth Circuit and would have reached the same result as the District Court for the Northern District of Illinois on the facts of this case. Moreover, the Southern District of New York, as well as the Ninth Circuit, would apparently concur with the dissenting opinion of Judge Bauer herein. Judge Bauer noted that the opinion of the majority expressed concern over the potential for forum shopping if the district court's order were upheld. Judge Bauer pointed out that jurisdiction under Section Four of the Federal Arbitration Act is specifically limited by the traditional jurisdiction and venue requirements of Title 28. *Snyder v. Smith*, 736 F.2d 409, 421 (7th Cir. 1984). Given the decisions in the District Courts of New York that impliedly agree with the reasoning of the dissent by Judge Bauer herein, an apparent conflict thus also exists between the Seventh and Second Circuits with respect to the statutory construction issue raised by this petition.

The restrictive construction of Section Four adopted by the divided court herein conflicts with the public policy objectives of speedy and economical dispute resolution embodied in the Federal Arbitration Act, as repeatedly articulated by the Court. *See, e.g., Moses H. Cone Hospital v. Mercury Construction Corp.*, ... U.S. ....., 103 S.Ct. 927, 74 L.Ed. 2d 765, 784 (1983) (noting statutory policy

to promote rapid and unobstructed enforcement of arbitration agreements); *Prima Paint Corporation v. Flood & Conklin*, 388 U.S. 395, 404 (1967) (unmistakably clear Congressional purpose that the arbitration procedure, when selected by the parties, be speedy and not subject to delay and obstruction in the courts).

More important, when compared to decisions of other circuits, the Seventh Circuit majority opinion demonstrates the substantial confusion that exists in the interpretation of the statute. If arbitration is to be a speedy and efficient alternative means of dispute resolution, each party to an arbitration agreement must know with certainty where and how it can enforce that agreement in the event the other party refuses to arbitrate. While the language of the statute seems clear, the limitation of the authority of district courts imposed by the Seventh Circuit injects ambiguity where there appeared to be none. Petitioner submits that the Court should resolve the conflict among the circuits with respect to the meaning of Section Four of the Federal Arbitration Act so that the modern trend toward extra-judicial dispute resolution can continue to develop in an orderly fashion.

II.

THE EFFICIENT ADMINISTRATION OF THE FEDERAL COURT SYSTEM REQUIRES THAT, PURSUANT TO THE DECISIONS AND POLICY OF THE COURT, TIME LIMITATIONS MUST BE IMPOSED PARTICULARLY ON APPEALS PERTAINING TO ARBITRATION ORDERS.

Timely disposition of a dispute is the most essential goal of arbitration. The parties to an arbitration procedure have bartered away their traditional procedural rights within the judicial system in order to effect a rapid and efficient resolution of the dispute. Unlimited time, therefore, is the very antithesis of arbitration. As the overseer of the efficient administration of arbitration within the federal judicial system, the Court should address and correct those procedures that frustrate the timeliness of arbitration.

In the instant case, the Seventh Circuit lacked subject matter jurisdiction over Smith's untimely appeal and, therefore, should have dismissed the appeal without reaching the merits. In *University Life Insurance Company of America v. Unimarc, Ltd.*, 699 F.2d 846 (7th Cir. 1983), the Seventh Circuit held that an order compelling arbitration is a final appealable order for purposes of appellate jurisdiction under 28 U.S.C. § 1291. *Id.* at 848. The failure to apply this rule to the instant appeal directly contravenes the rule articulated by the Court in *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 379 (1981), that jurisdictional decisions may never be applied prospectively only.

Smith did not appeal the order compelling arbitration within the time limits established by Fed. R. App. P. 4(a). He chose instead to await the outcome of the arbitration proceedings and appealed the judgment confirming the

award. The decision of the Seventh Circuit gives Smith two opportunities to arbitrate since Snyder must now repeat the entire process in Houston. Moreover, the decision of the Seventh Circuit frustrates the purpose of arbitration by unduly increasing the expense of the arbitration itself and by depriving petitioner of access to the arbitrators' award of nearly $600,000. The Seventh Circuit has has thus permitted litigation to exacerbate and prolong the very procedure intended to alleviate the problems attendant to traditional court proceedings.

Although the Seventh Circuit had not squarely addressed the issue of whether an order compelling arbitration was appealable at the time the district court entered its order, 736 F.2d at 414, the weight of the authority held that such an order was a final appealable order under 28 U.S.C. § 1291. *See, e.g., Continental Grain Co. v. Dant & Russell, Inc.*, 118 F.2d 967, 968 (9th Cir. 1941); *Goodall-Sanford, Inc. v. United Textile Workers*, 233 F.2d 104, 106 (1st Cir. 1956), *aff'd*, 353 U.S. 550 (1957); *Krauss Bros. Lumber Co. v. Louis Bossert & Sons, Inc.*, 62 F.2d 1004, 1005 (2d Cir. 1933) (L. Hand, J.); *Farr & Co. v. CIA. Intercontinental De Navegacion*, 243 F.2d 342, 345 (2d Cir. 1957); *Chatham Shipping Co. v. Fertex Steamship Corp.*, 352 F.2d 291, 294 (2d Cir. 1965) (Friendly, J.); *Rogers v. Schering Corporation*, 262 F.2d 180, 182 (3d Cir.), *cert. denied*, 359 U.S. 991 (1959) (issue considered settled). *See also Hartford Financial Systems, Inc. v. Florida Software Services, Inc.*, 712 F.2d 724, 728 (1st Cir. 1983) (when Section Four motions are made it is universally conceded that the resulting order is final and appealable).

At the time this appeal was taken, *University Life* had been decided in accordance with the weight of the authority in other jurisdictions. On the basis of *University Life* and the mandate of *Firestone*, the Seventh Circuit lacked

jurisdiction to review the order compelling arbitration because Smith had failed to appeal it within the time limit established by Fed. R. App. P. 4(a). The majority's concern for possible prejudice to Smith is misplaced for two reasons. First, the case law put him on notice that there was a reasonable basis to conclude that the order to arbitrate was a final appealable order. Second, and more important, the Seventh Circuit lacked discretion to apply the jurisdictional rule of *University Life* prospectively only. *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 379 (1981). *Accord Lewis v. Internal Revenue Service*, 691 F.2d 858 (8th Cir. 1982); *de Mouy v. Ingvoldstad*, 664 F.2d 21 (3d Cir. 1981). Petitioner respectfully requests that the Court resolve the conflict between the decision of the Seventh Circuit in this case and the prior decision of the Court in *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368 (1981).

Snyder is the party prejudiced by the opinion of the divided court herein, because now, four years later, Snyder will be forced to endure the additional delay and incur the additional expense of filing another petition to compel arbitration in the Southern District of Texas. The Texas court's order compelling arbitration and the ultimate arbitration hearing will be identical in all respects to the September, 1982, proceedings, excepting only the location. This is indeed an ironic result of the construction of a statute specifically designed to provide a convenient, speedy, and economical alternative to litigation.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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